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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT GILJUM, JOHN THORPE, JEANNE KRAMER,  
NILAY BANKER, and VANDANA DEEP

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Appeal 2007-3359  
Application 09/540,977  
Technology Center 2100

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Decided: March 7, 2008

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Before JAMES D. THOMAS, LANCE LEONARD BARRY, and  
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 21-32. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## THE INVENTION

The disclosed invention relates generally to the field of web sites, and more particularly toward designing, creating, and maintaining web sites (Spec. 1). In accordance with one embodiment of Appellants' invention, a web site system permits a site administrator to construct the overall structure, design and style of the web site. Appellants' web site system permits content for the web site to originate from multiple content contributors. Control of the content is distributed among folder owners. Thus, Appellants' system permits assignment of content control to those persons who are familiar with the content. The content or folder owners maintain control over the web site users that view the web site content (Spec. 3).

Independent claim 21 is illustrative:

21. A machine-implemented method of managing content at a web site, the method comprising:

- receiving a first request from a user to create a particular content item in a particular folder associated with the web site;

- in response to the first request, inspecting permission data to determine that said user has create-with-approval privileges relative to said particular folder;

- in response to determining that said user has create-with-approval privileges relative to said particular folder, adding said particular content item to said particular folder in a not-publicly-visible state;

- in response to receiving input that grants approval for the particular item to be created in the particular folder, changing

the state of the particular content item to a publicly-visible state;

receiving a second request;

in response to the second request, determining a current state of the particular content item;

if the current state of the particular content item is the publicly-visible state, then responding to the second request by providing a web page that includes said particular content item; and

if the current state of the particular content item is in the not-publicly-visible state, then responding to the second request by providing a web page that does not include said particular content item.

#### THE REFERENCES

The Examiner relies upon the following references as evidence in support of the rejection:

|         |                    |                                       |
|---------|--------------------|---------------------------------------|
| Salas   | US 6,233,600 B1    | May 15, 2001<br>(filed Jul. 15, 1997) |
| Goedken | US 2002/0133494 A1 | Sep. 19, 2002<br>(filed Apr. 8, 1999) |

#### THE REJECTION

Claims 21-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salas in view of Goedken.

## PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007).

## ISSUE(S)

We decide the question of whether Appellants have shown the Examiner erred in holding that the combination of Salas and Goedken renders obvious the claimed subject matter. More particularly, we have determined that the following issue is dispositive in this appeal:

Whether Appellants have shown the Examiner erred in finding that the combination of Salas and Goedken teaches and/or suggests the following limitations:

in response to determining that said user has create-with-approval privileges relative to said particular folder, adding said particular content item to said particular folder in a not-publicly-visible state;  
(*see* Independent claims 1, 27).

## Independent Claims 21 and 27

We consider the Examiner’s rejection of independent claims 21 and 27 as being unpatentable over Salas in view of Goedken.

Although Appellants have argued additional limitations in the Brief, we conclude that we need only reach the single issue set forth above to decide this appeal.

## ANALYSIS

### Claim Construction

We begin our analysis by construing the scope of the claimed “create-with-approval privileges.” (*See* independent claims 1 and 27). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). The presumption will be overcome where the patentee, acting as his own lexicographer, has set forth a definition for the term different from its ordinary and customary meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. *Brookhill-Wilk*, 334 F.3d at 1299. Our reviewing court has determined that “the specification is ‘the single best guide to the meaning of a disputed term,’ and that the specification ‘acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005) (*en banc*) (internal citation omitted).

From the record before us, it is our view that the claimed “create-with-approval privileges” has no established ordinary and customary meaning in the art. We note that it is the Appellants’ burden to precisely define the invention, not the PTO’s. *See In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Although a patent applicant is entitled to be his or her own lexicographer of patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant

must do so by placing such definitions in the Specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Here, we find Appellants have provided a definition in the Specification for the claimed “create-with-approval privileges” that has sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed, as follows:

a “create with approval” privilege permits an end-user to add new items to the folder. Items that are added using the “create with approval” privilege must be approved by the folder owner before displayed publicly.  
(Spec. 43, ll. 6-9).

Appellants also disclose an example that illustrates how a create-with-approval privilege is used, as follows:

An individual with “create with approval” privileges may only add items to the folder. Under this scenario, the item does not become visible to other users until the folder owner approves the item. This feature enables the folder owner to maintain control of the folder’s content.  
(Spec. 44, ll. 6-10).

In the record, the Examiner acknowledges that “Salas does not explicitly disclose owner approval or selective visibility or the create-with-approval privilege.” (Ans. 3). The Examiner looks to the secondary Goedken reference for these limitations that are not taught by the primary Salas reference. The Examiner finds that Goedken teaches “a database system where additions (messages) to the system are not visible until approved by an administrator (para 74).” (Ans. 3).

We conclude that the language of the claims requires more than merely making additions visible after approval by an administrator. In particular, we conclude that the language of each instant independent claim allows a user to unilaterally make content additions in a not-publicly-visible state according to a preexisting *user privilege*, and not according to case-by-case review and approval by an administrator, as taught by Goedken.

We reproduce paragraph [0074] of Goedken below:

[0074] In some applications it may be desirable to place controls on who can change the category/custodian database 104. Specifically, in a perfect world, all possible transmitters of status change messages and/or category change messages would have pure and good intentions. However, in the world as it presently exists, there are vandals and other persons of ill intentions who might try to interfere with the operation of the apparatus 10 by disrupting the database 104. To avoid such efforts, it might be desirable to adapt the category manager 106 to only accept status change messages and/or category change messages that have been screened. In such circumstances, the category manager 106 would reroute any unscreened status change and/or category change messages (possibly identified, for example, by a failure to include a predetermined digital signature) *to an administrator for examination and approval or disapproval* [emphasis added].

After considering the evidence before us, we agree with Appellants that Goedken fails to remedy the deficiencies of Salas. We note that Goedken's paragraph [0074] teaches an embodiment where category manager 106 reroutes unscreened status change and/or category change messages to an administrator for examination and approval or disapproval. Paragraph [0072] of Goedken further teaches that "[t]he category manager



106 is responsive to status change messages and category change messages to update the category/custodian database 104.” (*See also* Goedken, Fig. 9). Thus, Goedken teaches that category manager 106 updates records in database 104 after database change messages have been screened and approved by an administrator (*see* Goedken ¶¶[0072], [0074]).

We note that the language of each instant independent claim expressly requires a determination as to whether a user “has create-with-approval privileges relative to said particular folder.” In contrast, Goedken does not teach any preexisting user privilege relative to a folder (¶¶[0072], [0074]). In Goedken’s system the category/custodian database 104 (Fig. 9) is not updated to reflect any unscreened status change and/or category change message (i.e., added content) until *after* an administrator examines and approves the change (¶[0074]). As taught by Goedken, the changes to database 104 (Fig. 9) are only implemented and made publicly visible *after* the administrator approves the changes (*id.*).

Because there is no provision in Goedken to allow a user to make not-publicly-visible changes (i.e., content additions) to database 104 (with or without administrator approval), we find that Goedken does not fairly teach nor suggest the language of each instant independent claim that expressly allows the user to add a particular content item to a particular folder in a not-publicly-visible state, so long as the user possesses “create-with-approval privileges” (*see* claims 21 and 27). Therefore, we agree with Appellants that the Examiner’s proffered combination of Salas and Goedken does not teach nor fairly suggest at least the following limitations of each instant independent claim:

in response to determining that said user has create-with-approval privileges relative to said particular folder, adding said particular content item to said particular folder in a not-publicly-visible state;  
(*see* Independent claims 1, 27).

Because Appellants have met their burden of showing error in the Examiner's prima facie case of obviousness, we reverse the Examiner's rejection of independent claims 21 and 27 as being unpatentable over Salas in view of Goedken. Likewise, we reverse the Examiner's rejection of dependent claims 22-26 and 28-32 which depend from independent claims 21 and 27, respectively.

#### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude Appellants have met their burden of showing that the Examiner erred in rejecting claims 21-32 under 35 U.S.C. § 103(a) for obviousness.

Appeal 2007-3359  
Application 09/540,977

DECISION

We reverse the Examiner's decision rejecting claims 21-32.

REVERSED

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